

(2001) 02 BOM CK 0088

In the Bombay High Court

Case No : Writ Petition No. 2432 of 1995

Pramukh Sampadak Marathi Vishwakosh and Others

APPELLANT

Vs

Dhairyasheel S. Phalake and Others

RESPONDENT

Date of Decision : 23-02-2001

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2001) 3 ALLMR 79 : (2001) 3 BomCR 390 : (2001) 91 FLR 812

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : N.H. Gursahani, for the Appellant; S.V. Naik, for the Respondent

Judgement

A.M. Khanwilkar, J.—This writ petition takes exception to the order passed by the Industrial Court, Kolhapur dated September 5, 1994 in Complaint (U.L.P.) Nos. 12 to 17 and 156 to 169 of 1990.

2. The respondents original complaints had filed complaints before the Industrial Court, Kolhapur praying for a declaration that the petitioners had engaged in an unfair labour practice under Item Nos. 6, 9 and 10 of Schedule IV and for a direction against the petitioners herein to give fair treatment to all workers including the respondents herein and to pay wages for 30 days in the month for the period they have worked. The respondents further prayed for a declaration that the respondents be declared as permanent workers of the petitioners and their services be treated as continuous and give them all benefits of permanent employees and difference of wages.

3. Briefly stated, the respondents were employed as visiting Editors by the petitioners. According to the respondents, they were working for last more than 14 years and were discharging duties which would classify the definition of "workmen" within the meaning of M.R.T.U. & P.U.L.P. Act, 1971 ("the Act" for short). The respondents accordingly prayed for the aforesaid reliefs. The said complaints were resisted by the petitioners herein on the ground that the

petitioner No. 1 was not an industry; and, in any case, the respondents were not workmen within the meaning of the provisions of the said Act. It was further contended on behalf of the petitioners that at any rate the respondents have not completed 240 days of continuous service so as to become entitled for the relief that was claimed in the complaints. The Industrial Court by the impugned order has held that petitioner No. 1 is an industry. It has further held that the respondents were workmen within the meaning of the said Act. The Industrial Court has also recorded that the respondents have worked for about 10 years or more. On the basis of the said conclusions, the Industrial Court has allowed the complaints.

4. In so far as the conclusion, reached by the Industrial Court that the petitioner No. 1 is an industry, Mr. Gursahani appearing for the petitioners has not taken serious objection thereto. According to him, the said conclusion is based on the consistent view taken by the Apex Court and, therefore, it is not possible to successfully assail the said conclusion.

5. Mr. Naik appearing for the respondents fairly concedes that the conclusion reached by the Industrial Court that the respondents were employed as Working Journalists within the meaning of section 2(f) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 cannot be sustained. According to him, the respondents were not employed as Working Journalists and were in fact discharging duties which were mainly of clerical nature.

6. Both the Counsel have addressed this Court at length and referred to various materials in support of their respective stand. However, on going through the judgment under challenge, I find that none of the material has been considered by the Court below while arriving at the conclusion that the respondents were workmen within the meaning of the said Act. The Industrial Court has dealt with the said issue in paras 16 to 24 of the impugned judgment. Both the Counsel agree that the materials that are referred to before this Court during arguments are relevant for deciding the issue as to whether the complainants are workmen, but the same have not been referred to in the judgment under appeal. Without analysing the relevant material, particularly the pleadings and the evidence adduced by both the sides, it was inappropriate for the Court below to record a finding that the respondents were workmen within the meaning of the said Act. In this context, it would be relevant to note that whether a person is workman or not would much depend on the evidence with regard to the nature of duties of the said person. If the nature of duties of each of the complainants was separate and not common, it was imperative for the Industrial Court to have recorded a clear finding with regard to the nature of duties of each of the complainant. It is only thereafter that the Industrial Court could have arrived at a conclusion as to whether the respondents are workmen within the meaning of the said Act. It is contended on behalf of the respondents that out of 20 complainants 10 were working as Tracers, 1 as Artist, 2 as Stenographers and 7 as Proof Readers and

clerical work. If this be so, it was necessary to analyse the nature of duty of each category of employees to find out whether they would fit into the definition of workmen. It is well settled that whether the person is workman or not can be answered after looking to the nature of his duties. The Tribunal obviously has failed to examine the matter of each of the category in this context. Mr. Gursahani has relied on the decisions to buttress his contention that the respondents cannot be held to be workmen. In my view, the Tribunal ought to have examined all this aspects in detail before reaching a clear finding as to whether the respondents are workmen or not. Further, the basis on which the Tribunal has proceeded that the respondents were Working Journalists and therefore workmen is misdirected. Now the respondents Counsel concedes that the respondents are not claiming to be Working Journalists as held by the Tribunal. Naturally, therefore, the reasoning of the Tribunal for recording that the respondents are workmen is washed out. Even for this reason, the conclusion of the Tribunal on this issue cannot be sustained.

7. Besides, the discussion on the said issue of workmen is cryptic and unintelligible, in the sense that it does not advert to all the relevant materials, even the issue whether the respondents have worked for more than 240 days, there is no satisfactory discussion in the impugned judgment. With regard to the said aspect, the only discussion appears to be in para 25 of the impugned judgment. There is no clear finding recorded with regard to each of the complainant.

8. In the circumstances, I find no other option but to remand the matter to the Industrial Court to re-examine the evidence on record and after analysing the relevant materials to record a clear finding on the issue whether the respondents are employees/workmen within the meaning of the said Act and further whether each of them has worked for more than 240 days continuously as required so as to entitle them to the relief claimed in the complaints.

9. Accordingly, the impugned order cannot be sustained and deserves to be set aside. It is now pointed out that the Industrial Court at Satara has been established and it would be convenient for both the sides that the complaints are finally heard and decided on remand by the Industrial Court at Satara. In the circumstances, the complaints are remanded to the Industrial Court at Satara for being decided on merits in accordance with law after giving opportunity to both sides.

10. It is made clear that all questions are kept open. The Industrial Court shall decide the matters uninfluenced by any of the observations in the impugned judgment.

11. Since the complaints were filed as back as in 1990, it would be expedient in the interest of justice to finally dispose of the complaints expeditiously, preferably within two months from the receipt of writ of this Court.

12. Rule made absolute in the above terms. No order as to costs.

Rule made absolute.